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## SUMMARY OF MEETING

## COMMITTEE ON LEGAL SERVICES

**February 3, 2017**

The Committee on Legal Services met on Friday, February 3, 2017, at 12:30 p.m. in SCR 357. The following members were present:

Senator Cooke, Chair  
Senator Gardner  
Senator Kagan  
Senator Marble  
Representative Foote, Vice-chair  
Representative Gray  
Representative Herod  
Representative Willett  
Representative Wist

Senator Cooke called the meeting to order. Senator Marble was appointed temporarily by order of the Senate Majority Leader to substitute for Senator Holbert and Representative Gray was appointed temporarily by order of the House Majority Leader to substitute for Representative Lee.

**12:31 p.m.** – Debbie Haskins, Assistant Director, Office of Legislative Legal Services, said I just want to make a comment about a couple of procedural points about this committee meeting. For agenda item one, procedurally the Committee is sitting as the Committee on Legal Services to decide this rule issue and then when the Committee moves to the second item, the Rule Review

Bill, at that point the Committee will be sitting as the Senate committee of reference on the Rule Review Bill.

**12:32 p.m.** – Christy Chase, Managing Senior Attorney, Office of Legislative Legal Services addressed agenda item 1 a – Rule 47-900. E. of the Liquor Enforcement Division, Department of Revenue, concerning marijuana consumption, 1 CCR 203-2, Liquor Code (LLS Docket No. 170059; SOS Tracking No. 2016-00527).

Ms. Chase said as you know I am here today to discuss Rule 47-900. E. which was adopted by the Liquor Enforcement Division (LED) in the department of revenue (DOR) on November 18, 2016. The rule is part of the 2017 rule review cycle and under normal circumstances we would not have been reviewing this rule at this time. However, Senator Kagan has requested our Office to conduct an out of cycle review of the rule which is why we are discussing the rule today. Before I delve into the rule itself, I want to remind the Committee that in our statutory obligation to review agency rules our role is not to examine whether an agency rule is good or bad, our role is to analyze whether the agency has the statutory authority to adopt the rule. Specifically section 24-4-103 (8)(a), C.R.S., of the State Administrative Procedures Act (APA) says no rule shall be issued except within the power delegated to the agency and as authorized by law, and a rule shall not be deemed to be within the statutory authority and jurisdiction of any agency merely because such rule is not contrary to a specific provision of a statute. That's the test we apply when we reviewed this rule and it's the test that led us to the conclusion and our recommendation regarding this rule. Rule 47-900. E., which is set forth on page 2 of the memorandum we supplied to you, prohibits a person licensed under the Colorado beer code, the Colorado liquor code, or the special events permit laws from permitting the consumption of marijuana or marijuana products on any licensed premises. As support for this rule the LED cites its general rule-making authority in section 12-47-202 (1)(b), C.R.S., which authorizes the LED to adopt rules "as necessary for the proper regulation and control of the manufacture, distribution, and sale of alcohol beverages". This statutory provision is set forth on page 3 of your memorandum. Additionally, the LED has asserted that the rule is authorized under its authority to adopt rules under section 12-47-202 (2)(a)(I)(L), C.R.S., which provides rule-making authority regarding health and sanitary requirements; under section 12-47-202 (2)(a)(I)(M), C.R.S., which authorizes rules to set standards of cleanliness, orderliness, and decency; under section 12-47-202 (2)(a)(I)(P), C.R.S., regarding practices unduly designed to increase the consumption of alcohol beverages; and under section 12-47-202 (2)(a)(I)(R), C.R.S., which authorizes rules regarding such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of Colorado liquor laws. All of these statutory provisions are set forth on page 3 of

your memorandum. As I will explain, in our view none of these cited statutes grants the LED the authority to adopt a rule to ban the consumption of marijuana or marijuana products on liquor licensed premises which is why we are recommending the Committee repeal LED Rule 47-900. E. effective May 15, 2017.

The LED rule-making authority pertains to the regulation of the manufacture, distribution, and sale of alcohol beverages. The LED does not have authority to regulate other products or businesses with regard to the regulation of marijuana and marijuana products and businesses, whether medical or retail. The general assembly has established a separate and distinct regulatory scheme, administered by a separate regulatory body within the DOR known as the Marijuana Enforcement Division (MED). While the marijuana and liquor laws both create what we refer to in the law as a state licensing authority, when you look at the organic statutes creating those licensing authorities, each is granted authority over separate and distinct products and businesses and the statutes do not authorize overlap or for a single entity in state government to regulate both alcohol beverages and marijuana. The MED regulates and adopts rules in furtherance of its regulatory authority over marijuana and marijuana products and the businesses engaged in cultivating, manufacturing, distributing, and selling and testing medical and retail marijuana. The LED on the other hand regulates and adopts rules in furtherance of its regulatory authority over alcohol beverages and the businesses that manufacture, distribute, and sell alcohol. Under its general rule-making authority the LED only has the authority to regulate the manufacture, distribution, and sale of alcohol beverages. This authority does not extend to the regulation of marijuana and marijuana products. The LED has also asserted in the statement of basis and purpose for the rule, which appears on page 2 of your memorandum, that it has the authority to adopt Rule 47-900. E. under its authority to adopt rules establishing health and sanitary requirements, setting standards for cleanliness, orderliness, and decency, rules to address practices that are unduly designed to increase alcohol consumption, and rules for the fair, impartial, stringent, and comprehensive administration of the liquor laws. The statement of basis and purpose asserts that the purpose of the rule banning marijuana consumption on liquor licensed premises is to exercise proper regulation and control over the sale of alcohol beverages, promoting the social welfare and health, peace, and morals of the people of the state, and to establish uniform standards of decency, orderliness, and service within the licensed industry. Neither the rule making statute nor the materials submitted as part of the rule filing truly assist in determining whether the rule at hand falls within these categories of grants of rule-making authority. We looked at what other types of rules the LED had adopted under these grants of rule-making authority. As outlined in the memorandum on pages 6 to 8, if you examine the types of rules the LED has

adopted in the past under the category of health and sanitary requirements or standards of cleanliness, orderliness, and decency, these rules pertain to topics like maintaining the licensed premises in a clean and sanitary condition so that patrons don't get ill from contaminated food or beverages that they consume on the licensed premises; proper labeling and control of alcohol beverage containers to ensure the contents are not altered, for example, to increase the alcohol content which would have a negative impact on the consumers health; prohibiting rowdiness, undue noise, or disturbances or activities that would offend the senses of the average person; selling or serving alcohol beverages to a visibly intoxicated person; and requirements for employees and patrons regarding proper attire and prohibitions against exposing specified body parts or engaging in specified sexual acts. All of these rules relate to conducting a clean, orderly, decent, and respectable establishment. The LED in its rule submittal did not articulate how banning consumption of marijuana relates to conducting an orderly, decent, and respectable establishment and the ban on marijuana consumption goes beyond what has traditionally been within the category of rules regarding decency and health and sanitary requirements. The authority the LED relies on does not clearly grant the authority to ban marijuana consumption on liquored licensed premises and remember the standard under the APA, a rule shall not be deemed to be within the statutory authority or jurisdiction of any agency merely because such rule is not contrary to the specific provisions of the statute. This rule may not be directly contrary to the statute, but it is our view that the rule is not within the LED's statutory authority and jurisdiction to regulate the manufacture, distribution, and sale of alcohol beverages and under the APA cannot be deemed to be within the agency's statutory authority. With regard to rules on practices unduly designed to increase alcohol consumption, at this time Rule 47-900. E. is the only rule in the current LED rules published in the Colorado Code of Regulations (CCR) that specifically cite this statutory provision as grounds for a rule and the LED has not articulated how marijuana consumption on a licensed premise is unduly designed to increase alcohol consumption. When reviewing case law on this issue, it appears that the types of activities that this statutory language contemplates is the practice of bars and clubs having employees whose sole job is to solicit and encourage patrons to purchase more drinks, thus consume more alcohol. That is clearly a practice that is designed to increase alcohol consumption. It's not so clear that the act of consuming marijuana is designed to increase alcohol consumption. The only other current LED rule that refers to the cited authority of section 12-47-202 (2)(a)(I)(R), C.R.S., which is regarding rules for fair, impartial, stringent, and comprehensive administration is Rule 47-200., which relates to procedures for issuing declaratory orders. That rule appears to fall within the statutory provision in that it sets forth procedures applicable to any person seeking a statement of position or declaratory order from the LED. It's not clear though how a rule banning consumption of a

product that the LED is not authorized to regulate relates to the fair, impartial, stringent, and comprehensive administration of the statutes comprising the Colorado beer code, the Colorado liquor code, and laws regarding special event permits. There's no specific provision in any of those laws that mentions the consumption of marijuana or the LED's authority to adopt a rule to address that issue. It's not clear how adopting a rule on marijuana consumption relates to the fair, impartial, stringent, and comprehensive administration of those laws. Again, the rule may not appear to be contrary to this provision, but under the standard in the APA we cannot simply deem the rule to be within the statutory authority and the jurisdiction of the agency merely because there's no conflict between the two. Rule 47-900. E. addresses a topic that's not mentioned in the liquor laws and is not clearly within the LED's statutory authority or jurisdiction and should not be deemed so.

Finally, whether or not marijuana consumption should be banned on liquor licensed premises is a policy decision for the general assembly as outlined on pages 8 to 10 of the memorandum. Under the Colorado constitution, the legislative power, that is the power to make laws, is vested in the general assembly while the executive branch is tasked with enforcing the policies established by the general assembly. Article III of the state constitution prohibits any branch of government from exercising the power of the other branches so as part of the executive branch, the LED is not permitted to make the law, but it is instead tasked with enforcing the laws enacted by the legislative branch. With regard to marijuana consumption the general assembly has not enacted a specific policy on consumption, although the general assembly has prohibited consumption at any establishment that's licensed under either of the marijuana codes, medical or retail. In other words, the general assembly has established policy that marijuana cannot be consumed at a retail marijuana store or medical marijuana center, places where individuals may purchase retail or medical marijuana, and the MED as an arm of the executive branch is responsible for enforcing this policy. The general assembly, however, has not enacted a comparable policy with regard to marijuana consumption on liquor licensed premises. Regardless of whether banning marijuana consumption on liquor licensed premises is a good idea, the LED does not get to set the policy and has overstepped the limits of its executive powers in adopting the rule. The LED in the last sentence of the statement of basis and purpose which appears on page 2 of the memorandum states that the medical and retail marijuana constitutional provisions do not permit open in public consumption of marijuana and the state licensing authority deems liquor licensed premises to be public places. Whether public consumption of marijuana is prohibited or not is still an open question in the state, but in terms of what constitutes public consumption and whether a particular business establishment is a public place, those are policy decisions and it is our contention that the LED is not the branch of state government that

is granted the power to set that policy about what is a public place and whether and where marijuana can be publicly consumed. The general assembly by its actions since the passage of both Amendment 20, which authorized medical marijuana, and the passage of Amendment 64, authorizing retail marijuana, has clearly indicated its intent to develop marijuana policy for the state. Indeed, in the past four legislative sessions the general assembly has introduced over 60 measures to address various aspects of marijuana regulation and taxation and had introduced six bills so far in the current legislative session, one of which would actually create a license for marijuana consumption clubs and it would also prohibit alcohol sales on those premises. There's a study committee that met last summer and fall to examine the costs and benefits associated with the legalization of marijuana in Colorado and in 2014 the marijuana revenues interim committee met throughout the summer and fall, and after the passage of Amendment 64 members of the general assembly participated on a task force and then a select committee to develop legislation establishing regulatory scheme for retail marijuana. The general assembly has clearly engaged in establishing statewide policies regarding legalized marijuana in Colorado, including establishing some limitations on where marijuana may be consumed. The general assembly has not expressed any intent to delegate the authority to establish that policy on where marijuana can and cannot be consumed to a state agency and specifically has not delegated that authority to the agency tasked with regulating the manufacturing, distribution, and sale of alcohol beverages in the state. This is a policy decision for the legislative branch of government. For all of these reasons we recommend that Rule 47-900. E. of the rules of the LED concerning marijuana consumption be repealed.

Representative Gray said how do we draw a line as a matter of law between saying that this organization has the power to say placing a nude photograph up is indecent behavior and we can create rules against it based on it being indecent behavior and saying public consumption of marijuana is indecent behavior and we have the power to regulate indecent behavior? Ms. Chase said just looking at the history and the tradition behind rules that the LED has adopted in interpreting what that standard is, they've been basically the kind of things that people think are indecent. They have been regarding the way patrons and employees dress and the kinds of activities of a potential sexual nature that they may or may not engage in. Marijuana has become legal in this state and by a vote of a majority of the electorate it suggests that maybe the majority of people don't think marijuana consumption is indecent, per say. Representative Gray said and that point which you make at the bottom of page 7 of your memo is the part that's most troubling to me of the analysis because all of those other activities are also legal and have always been legal. It's not illegal to have pictures of sexually inappropriate activity; it's not illegal to engage in that. Those are also legal activities and I feel like you're asking us to adopt a different

standard. That the decency of public consumption of marijuana can't be questioned because the underlying conduct is legal, but for these other things the underlying conduct is also legal. I think that's the sort of standard that's offered to say well the reason you can't conclude that smoking marijuana in public is indecent behavior as a matter of law is because it's a legal activity, but I don't think that can possibly be the standard because all of those other things that we just mentioned are also legal activities. I'm not sure if you asked me to design a system that said should the LED have puritanical morality powers to say what can or cannot happen inside of a bar, I don't know whether that's a good idea or not, but that ship seems to have sailed a while ago. They have rules where they are enforcing some puritanical morality with respect to what's going on in bars and what I'm trying to figure out is what our role is to get to a conclusion that one rule is okay and the other one isn't; that puritanical morality when it comes to sexual things is okay and with respect to marijuana it isn't. The line that marijuana is legal doesn't get me there because both of those things are legal, it's just a question of whether it's moral and it's decent. And again I'm not saying that they should have that power, but we're saying they do have that power and I did not find how to draw a line between one and the other. Ms. Chase said in fact some of that activity is illegal under the current criminal code. You are not allowed to engage in sexual activity in public places and there are, I am not well versed in criminal law, but I do know that there are provisions in title 18 that make it criminal to engage in some of those activities that the LED has adopted rules on as well. Representative Gray said but clearly not all of them all, clearly not having a photograph that depicts certain body parts, that's not illegal. That's the thing, it that the standard that you think we should be applying, that this ability to regulate decency, applies to the ability to just say you can't do things that are already illegal. That would be easily applicable. Similarly, I don't think we would need to do that. I don't think the LED needs to say by the way you can't do things inside bars that are illegal to do anyway and I don't think that's what these things are. I don't think that's the standard we have here and what I'm trying to find, and I think it's the crux of what we are talking about, because literally what you're asking us to say it that there is a line somewhere and they've crossed that line, they were totally fine over here when it came to the nudity and all this sort of stuff and somewhere they crossed a line and again the entire powers of the executive branch to regulate conduct is somewhere in between nudity and marijuana. I don't think legality works, but I'm trying to figure out where that line is where now the executive branch, somewhere on the bus between nudity and marijuana, crossed over that constitutional authority.

Representative Wist said I guess the crux of this issue for me is looking at the statutory authority that exists for the DOR with respect to the marijuana industry. I'm looking at sections 12-43.3-201 and 12-43.4-201, C.R.S., which

clearly extend regulatory authority and have that reside within the executive director of the DOR, and that extends to the cultivation, manufacture, distribution, and sale of medical marijuana and retail marijuana. So I guess my question is, there clearly is authority to act within the DOR with respect to marijuana so where is the line? Because I think what you're saying is that they've exceeded their authority, they've crossed the line, so my question is where is the line? Ms. Chase said the line is that the general assembly has established two separate regulatory schemes, one for marijuana and one for liquor and there are two separate divisions in the DOR and their authorities are different. The MED was created under the auspices of articles 43.3 and 43.4 of title 12, C.R.S., which are the medical and retail marijuana codes respectively. Those are separate authorities that have different authority over regulating marijuana and marijuana products and the industries that cultivate, manufacture, and sell those products. The state licensing authority for liquor is created in article 47 of title 12, C.R.S., and the authority of that body is over liquor. Additionally, there's no overlap between the two and there is precedent for the general assembly in giving one of those bodies additional authority. There was legislation to authorize the LED to regulate tobacco several years ago. There's no similar connection between the two different state licensing authorities. Representative Wist said it pertains to the product clearly, but doesn't it also pertain to the premises where the product is consumed? Ms. Chase said are you talking about marijuana products or alcohol? Representative Wist said I guess both. So if we are talking about marijuana being consumed at a premises where there's a liquor license it would seem to me that if the regulatory authority doesn't extend based on the product but instead extends based on the premises, logically that would extend to other products that are consumed on the premises, specifically marijuana. I'm trying to test your line because what I heard you say was that they have authority to regulate marijuana here, they have authority to regulate alcohol here, and they're issuing this regulation from the wrong authority. But I think it is a premise-based issue, not a product-based issue, and maybe we're speaking past each other and I'm doing a horrible job asking this question, but perhaps you can see my question and provide me some insight. Ms. Chase said I'll do the best I can. In my view the authority of the LED to regulate the manufacture, distribution, and sale of alcohol beverages relates to those businesses that engage in that and relates to how they engage in the practice of selling or distributing or manufacturing alcohol, not what other products may or may not be consumed on their premises.

Representative Foote said I actually had a question that I think might relate to what Representative Wist was just talking about. You're talking about how there's a line between the two. Of course the DOR has the authority to regulate alcohol in one area and has the authority to regulate marijuana in the other



area. I think what your saying is that they shouldn't be crossing that line and that's part of your thesis in the memo. So I'd like to flip it around a bit and just ask you in the area where they can regulate marijuana, do you think the DOR has the authority to say no alcohol can be consumed in a marijuana store? Ms. Chase said you know I hate to get into speculation. We work really hard whenever we're reviewing rules and working with agencies and when we have problems and they say well what if we said this and we have to say we don't pre-review rules. We look at the rule that's in front of us. I don't have that in front of me, but under the theory that I'm presenting I think my answer would be the MED, absent statutory authority to regulate that product and that activity, I don't know if they would have the authority to do it. Representative Foote said I'll ask a question that's maybe a bit less speculative here and on a different topic, which is, I've read over the materials from the Attorney General and the others that were provided to us, and I'm kind of drawn to this provision under Rule 47-900. about the health and sanitary authorities. You mentioned in your memo that health and sanitary authorities have typically gone towards whether or not someone would be sick at an establishment and so forth. Of course, one of the counter arguments to that is that there are health effects to the consumption of marijuana. There's public health effects to the consumption of marijuana as well as alcohol at the same time, and the authority in the rule just says health, so is it your position that that word "health" in the authority for the rule making does not apply to health effects to the individual of consuming marijuana and it does not apply to the possible public health effects for the consumption of both substances at the same place? Ms. Chase said no, not necessarily. Based on the rule that was submitted to us to review and the information that we were given at the time as well as looking at what prior rules had been adopted under that authority, it just didn't seem it fit under what the general assembly had contemplated by health and sanitary requirements.

Senator Kagan said as I read the rule, and I'd like to know whether I'm reading it right in your view, it would bar a licensed premises, a room in a club that has a liquor license for example, from saying Wednesday evening we're going to show movies, we're not going to serve any alcohol even though we have a license to do it, but we are going to let people smoke marijuana. That option of allowing single consumption of marijuana, not dual consumption of marijuana and alcohol, that would be prohibited, would it not, under this rule? Ms. Chase said I believe that's correct, assuming that the area, the room, that they would allow that consumption in is part of their licensed premises. The way the rule is written, any premises that is licensed under the beer or liquor codes or under the special event permit laws would be precluded from allowing consumption. I will note that smoking marijuana inside is currently prohibited under the clean indoor air act. Senator Kagan said thank you for that clarification. But using marijuana in another way, a premise, if it happened to be licensed to sell

alcohol, could not opt to bar alcohol for an evening, and nevertheless would be barred from, allowing the ingestion by nonsmoking method, for instance, edibles, of marijuana; it would not be able to serve those for example even if it wasn't serving alcohol at that time. Ms. Chase said that's correct and they wouldn't be able to serve marijuana period, but the rule would not allow any consumption on a licensed premises. Senator Kagan said I have another question which is about the word contemplate and I think this goes to what Representative Gray was asking earlier. Is what we have to do when we're parsing out what constitutes an authorized rule concerning decency as to what was contemplated by the legislature when they said okay you guys at the LED you are going to regulate decency and did they contemplate that that would regulate speech to the extent that it can be regulated? Did they contemplate that it would regulate marijuana consumption? Did they contemplate that it would regulate things like sexual activity? That is the nub of the question we are called upon to answer, I think, and I'm wondering if I've got that right, it's really what was the intended authority that was given and over what kinds of areas what it given. Is that the way we're supposed to be looking at this authorization? Ms. Chase said that's one argument under the grand scheme of the arguments that we've set forth in our memorandum. I think that that's one way to look at it and consider and look at the rules that they have traditionally adopted under that authority. I'm sure we could go back to prohibition and when we created the liquor code and what were the kinds of activities that the general assembly at the time was worried about and why that rule was put in place. I doubt marijuana consumption was contemplated in the 1930s, but the kinds of activities that are under their decency rules right now are probably some of the kind of activities that the general assembly contemplated at that time. I haven't specifically researched that issue to determine the legislative intent behind that rule-making authority, but I think it's a reasonable assertion.

Representative Willett said I'm going to try to come at this simplistically. It seems as though the charge of this Committee is to look at whether the rule is fairly within the statutory law and the legislature's intent so one can look at case law when the gap has been hit. So it's not clear, it's not black, it's not white, it's in the grey. I've not read these cases, but they've been cited to me, the *Wine and Spirits Wholesalers v. Colorado Department of Revenue*, 919 P.2d 894 (1996) case and the *People v. Lowrie*, 761 P.2d 778 (1988) case, which seem to imply that with regard to liquor and all things liquor where the legislature has left a gap there's a delegation to the agency to fill it and the other case talks about varied and complex problems including nudity. Given that both the court of appeals and supreme court's directives, don't we let that gap get filled by the executive branch by this rule? Ms. Chase said I think if you do read the cases they can be distinguished a bit from this scenario. With regard to *Wine and Spirits*, in that situation, the rule-making authority had to do with the LED's authority to

adopt rules regarding unfair competition and unfair practices in the business of manufacturing, distributing, or retail sale of alcohol and there's also a provision about how you can't exert undue financial influence or accept anything of value to basically encourage a retailer to take your product and put it on the shelf of their liquor store as opposed to any other person's product and then the rules that were adopted related exactly to an unfair practice of undercutting your prices in order to give a deal or something of value to a retailer to encourage them to list your product or sell your product. I think it's a much clearer connection there. It's not as clear here. It's also been a short period of time, relatively speaking, since marijuana has become legal in Colorado. I'm not sure given the activity of the general assembly in trying to regulate this industry and this product in Colorado that there's a clear gap in that the general assembly has been working on this issue and one of the measures back in 2013 that ultimately became law, that regulated the industry and regulated retail marijuana, did at one time have language in the bill to look at open and public and define those terms. That ultimately did not become part of the law, but I do think that that's something the general assembly has been grappling with for several years. And I would not concede that it is an explicit gap in that the general assembly has explicitly and intentionally left that blank in the law. I think it's a work in progress that is the general assembly's job to address. Representative Willett said you addressed the wine and spirits case, but you really didn't address I think this troublesome language for you in *Lowrie* from the supreme court that talks about varied and complex problems associated with alcohol, rendering it impractical for the general assembly to fix rigid standards and it goes on to talk about how you can't destroy the flexibility necessary to effectuate obvious goals in dealing with economic and social problems. So that case sure seems to give a lot of latitude to the executive branch in passing rules and regulations in the area of liquor enforcement. Ms. Chase said that case actually says the flexibility necessary to effectuate obvious legislative goals in dealing with complex economic and social problems. I'm not sure there's an obvious legislative goal with regard to whether or not marijuana can be consumed at a liquor licensed premise.

Senator Gardner said as some may know this is my ninth session on this Committee and I have been present through some very difficult and close judgement calls with respect to whether or not to uphold a regulation. I was actually here when one member of the Committee said in voting to uphold a regulation that when the legislature didn't get it right it was the proper role of the executive to kind of fill in and do our work for us. I don't subscribe to that, but I remember when that was said. Again, I do not subscribe to that, but this raises an interesting question that I don't know that I've ever sort of encountered and that is this – it seems to me, and I don't say this hypercritically or anything, as an attorney I pick up things that I've done 10 or 15 years ago

and say why in the world did I do it that way or I must have been in a hurry that day or any number of other things, but what I observe is that the LED's statement of basis and purpose was not as precise as it might be and it leaves one wondering what is the basis in this very broad statutory authority they have to regulate, what is the authority? Now I for instance believe that it's very unhealthy to drink and smoke dope at the same time, I just do. Maybe I'm scientifically wrong. Maybe I am, but I think that's the case and I think there might be at least some anecdotal evidence for that. If the LED were to say that, you know, you serve alcohol here and there are people consuming marijuana here, and that could be a serious health problem, do we all need to agree with them in order to uphold the rule or does it simply have to have a rational basis to uphold the rule. Ms. Chase said well I do think you'll hear that there are negative health effects of consuming both at the same time. I think you'll also hear or I'll just say consuming prescription drugs and alcohol at the same time can have ill effects. There's no rule about prohibiting the consumption of prescription drugs and arguably that has a negative health effect, but I'm not sure that that's contemplated under the regulatory scheme of regulating businesses engaged in the sale or manufacturing or distributing of alcohol. Senator Gardner said well I agree with you that taking prescription drugs and alcohol at the same time has negative health effects and I'm not sure how you police that particular regulation, but were the LED to try to find a set of standards that could be properly policed and enforced and so forth, I'd be willing to look at that. It's not a question in my mind, nor do I think it ought to be with respect to whether this rule stands or not, as to whether there are other things they haven't done. My second question is this, and it relates back to their basis of statement and purpose was not as precise or comprehensive as it might have been, are we bound as a Committee in terms of the statutory authority we have? Are we bound by the executive branch's own statement of basis and purpose as to whether or not a regulation can be upheld? What if we look at the statute and look at the regulation and come to the conclusion that it is within the statutory grant even if the agency didn't get it right? Is that our charter under the rule review process? Ms. Chase said no. We encounter rules all the time where agencies don't cite the proper authority for their rule making and we search for whether or not there are other grants of authority in the law that authorize the rule and we often times find those other authorities and don't have an issue with the rule and don't bring it to this Committee just because they miss-cited the statute. Based on the information we were provided with this rule making, and the statement of basis and purpose was part of that that we use, and looking through the entire liquor code, it appeared to us that it was not within the statutory authority for the LED to adopt this rule. If I had found some other grounds we wouldn't be here.

Representative Wist said I think for me this is the critical issue and I'm really going to try hard to ask a good, clear question because I think it goes to the core of it and that is that the statutory authority resides in the executive director of the DOR, right? Ms. Chase said the executive director under the statute has delegated that authority to a state licensing authority which is also created in the statute. Representative Wist said stay with me on the first question and that is that there is statutory authority with the executive director of the DOR to regulate both alcohol and marijuana, right? Ms. Chase said that's correct. Representative Wist said so the only question here is whether or not that statutory authority extends to the underlying subdivisions under the executive director, right? Ms. Chase said by that do you mean the MED and the LED, is that what you mean by the subdivisions? Representative Wist said the statutory authority is not extended in the statute to the divisions; the statutory authority is extended to the executive director. The divisions are operating under the executive director. Are you taking the position that the statutory authority articulated, for example, under section 12-43.3-201, C.R.S, does not extend to the division, that only the executive director has the authority to regulate the sale, manufacture, and distribution of marijuana? I don't think that was the intent of the statute. I think we would agree that that would extend to the division. So if the question is whether or not the statutory authority exists, I'm looking at the statute and I see that it does reside in the executive director's office. Ms. Chase said that's correct, yes, the statutory authority is granted to the executive director of the DOR through the state licensing authority and the state licensing authority is created in section 12-43.3-201, C.R.S., to regulate medical marijuana and then there's also one created in section 12-43.4-201, C.R.S., to regulate retail marijuana. I'm sorry if I'm not following. Representative Wist said I don't want to beat it into the ground, but if we're looking at whether or not it was intended by the statute for the authority to be extended, for there to be a delegation of rule-making authority to the executive branch and whether it's foreseeable that there would be rulemaking in a particular area, I'm looking at the statute and if I'm asked the question does the executive director and someone acting under the direction of the executive director, does that agency have the legal authority to promulgate regulations in this area? Looking with the statute that I looked at, I think the answer to that is yes. Ms. Chase said I can't disagree with that, but your questions sounds like their general authority as opposed to the authority of this particular rule. But right now we're talking about the LED and their authority under sections 12-47-201 and 12-47-202, C.R.S.

Senator Kagan said we've previously discussed whether or not unique consumption of marijuana would be banned under the rule. I'd like to ask whether the same analysis applies to nonpublic consumption. If under this rule a licensed premise said we're going to restrict entry to the licensed premises on

Friday, we're going to restrict entry only to those people who have a membership in our Friday club, and therefore it's not going to be open to the public on that evening and we're going to allow consumption of marijuana, would that run afoul of this rule in your view? Ms. Chase said yes, if it's part of the licensed premise, the rule bans consumption of marijuana on a licensed premise. Senator Kagan said and that means whether it's unique consumption of marijuana or dual and it means whether it's private in terms of exclusivity in allowing people in or whether it's public in allowing all members of the public in, none of that makes any difference. This rule just says this place, no consumption of marijuana. Is that your understanding of the rule? Ms. Chase said yes, that's my understanding. In the last line of the statement of basis and purpose the LED has declared all licensed premises to be "public" places. Senator Kagan said is it relevant in our deliberations in your view that other entities like the city and county of Denver are considering where and under what circumstances marijuana can be consumed? That we have in the general assembly in committees contemplated where marijuana can be consumed? That there are areas of government, there are legislatures within the state, contemplating and discussing and developing policy as to where, what locations are permissible? I remember a debate when we were doing HB 1284, the medical marijuana code, a long time ago whether or not we would require that a private multi-family dwelling would be permissible as a place, was it authorized, and could a landlord prohibit marijuana from being consumed on the premises. These matters of where it is permissible have been extensively discussed; they have not all been resolved, but are currently under extensive discussion. Is that relevant to the consideration of whether this is an intended authorization of this rule by the statutes in question? Ms. Chase said I think that's a question for you to decide what other information you want to consider. Whether other local governments have been acting in this area, that may or may not be important to you and the other members of the Committee, but the issue at hand is whether or not this particular rule fits within the LED's statutory authority. Whatever other information you think is important to you deciding, that is for you to decide I think.

**1:24 p.m.** – Ron Kammerzell, Senior Director of Enforcement, Department of Revenue, and Claudia Brett-Goldin, First Assistant Attorney General with the Marijuana, Liquor, and Bankruptcy Unit in the Revenue and Utilities Section of the Attorney General's Office, testified before the Committee. Mr. Kammerzell said I'm here today on behalf of the executive director of the DOR who is the state licensing authority for the LED. I'd like to acknowledge the Office staff Ms. Haskins and Ms. Chase for their cooperation and their willingness to talk to us and to our counsel leading up to this hearing today. We have great respect for their work. In the case of this particular issue we just simply professionally disagree with the legal analysis that has been provided and

we'd like the opportunity to provide our presentation, which I think has been shared with you, and I want to indulge you with just going through some of this because I think it's relevant to the conversations that have already been had with testimony from Ms. Chase. For a very brief overview, on November 18<sup>th</sup> the state licensing authority adopted Rule 47-900. E. prohibiting the consumption of marijuana and marijuana products on liquor licensed premises. As you are well aware this rule would normally expire in May of 2018, however, it's been expedited and review of this and a request for repeal of this rule in May of 2017. We believe based on our legal analysis that Rule 47-900.E. falls squarely within the state licensing authority's statutory rule-making authority and should not be repealed. A little bit about the Colorado liquor code, the Colorado liquor code is deemed an exercise of police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of the state of Colorado pursuant to section 12-47-102, C.R.S. The primary purpose of Colorado's liquor laws is to authorize the sale and consumption of intoxicating beverages while simultaneously protecting the public's health, safety, and welfare. The state licensing authority administers the Colorado liquor code. Regarding the general assembly, there's been a delegation of broad rule-making authority to the state licensing authority. First, the state licensing authority has the duty to make such general rules and regulations and such special rulings and findings as necessary for the proper regulation and control of the manufacture, distribution, and sale of alcoholic beverages and for the enforcement of articles 46, 47, and 48 of title 12, C.R.S., under the statutory provision 12-47-202 (1)(d), C.R.S. Second, the general assembly has identified several topics and provided that the rules adopted by the state licensing authority may cover, without limitation, the listed subjects and that's section 12-47-202 (2)(a)(I), C.R.S. Third, one of the listed subjects permits rule making on such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of articles 46, 47, and 48 of title 12, C.R.S. As has been previously discussed by the Committee, we believe the case law affirms the general assembly's broad delegation of authority to the state licensing authority. In particular, in several cases in the court of appeals and the Colorado supreme court where the general assembly has explicitly left a gap for the agency to fill there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation and that's in reference to *Wine and Spirits*. Also, the varied and complex problems associated with the sale of alcohol beverages render it often impracticable for the general assembly to fix rigid standards to guide agency action, particularly in situations regarding exercise of the police power without destroying the flexibility necessary to effectuate obvious legislative goals in dealing with complex economic and social problems, which is *Lowrie*. The general assembly has delegated the task of regulating the sale and consumption of alcohol to the executive director as the state licensing authority and a substantial degree of flexibility in rule making is

required if the director is to effectively carry out the delegated responsibility, that is also *Lowrie*. Rule 47-900. E. is authorized by the broad rule-making authority and any one of the following specific subjects for state licensing authority rule making, in particular section 12-47-202 (2)(a)(I)(L), C.R.S., authorizes the state licensing authority to adopt rules on the subject of health and sanitary requirements; section 12-47-202 (2)(a)(I)(M), C.R.S., authorizes the state licensing authority to adopt rules on the subject of standards of cleanliness, orderliness, and decency and sampling and analysis of products; and section 12-47-202 (2)(a)(I)(P), C.R.S., authorizes the state licensing authority to adopt rules on the subject of practices unduly designed to increase the consumption of alcohol beverages. The above subjects represent areas that the state licensing authority may cover, without limitation, pursuant to section 12-47-202 (2)(a)(I), C.R.S.

A little bit about health and sanitary requirements, Rule 47-900. E. is a proper exercise of the state licensing authority to regulate for health and sanitary requirements. While our January 31<sup>st</sup> memorandum inadvertently referred to the topic in section 12-47-202 (2)(a)(I)(L), C.R.S., as health and safety requirements rather than health and sanitary requirements, the primary purpose of Colorado's liquor laws is to authorize the sale and consumption of intoxicating beverages while simultaneously protecting the public's health, safety, and welfare. The rule-making records supported the state licensing authority's finding that the rule was designed to cover, without limitation, the subject of health requirements and in particular in the rule-making testimony we received testimony from a doctor, Daniel Vigil, from the Colorado department of public health and environment (CDPHE) who testified that Rule 47-900. E. is in the interest of protecting public health and safety and presented scientific papers supporting his conclusion and indicating that the cross-consumption of liquor and marijuana increases impairment and increases the likelihood of motor vehicle crashes. In addition, three liquor industry groups for restaurants, bars, and taverns testified in support of Rule 47-900. E. due to safety concerns and indications that many liquor liability insurers would pull out of the market if marijuana consumption were permitted on liquor licensed premises. In addition to that we received written comment and testimony from Mothers Against Drunk Driving (MADD). In particular, MADD participated as a stakeholder in the rule-making process and submitted a written recommendation in support of Rule 47-900. E. indicating that research shows that driving while high on marijuana may double the risk of an automobile crash, when both alcohol and marijuana are consumed at the same time it is likely to result in greater impairment than either one alone, detecting the combined impairment from the marijuana and alcohol would be very difficult for servers at the bars and restaurants, and our state and local law enforcement officers receive special training to detect this type of multiple substance



impairment that servers won't have. While they do receive training to identify alcohol impairment, it's not reasonable to expect that servers could effectively identify the combined impairment from alcohol and marijuana and prevent impaired customers from driving. As a result we would see more impaired drivers on Colorado's roads. A great deal of thought and consideration has gone into this rule-making process. To preserve public safety we urge you to adopt the proposed rule as drafted.

With respect to cleanliness and orderliness and decency the standards contemplated in section 12-47-202 (2)(a)(I)(M), C.R.S., are promoted by Rule 47-900. E. Marijuana use, possession, and distribution is illegal under federal criminal law and public use of marijuana is not authorized under the Colorado constitution, referencing Amendments 20 and 64. Other provisions of Rule 47-900. that have been upheld require that liquor licensed businesses conduct business on the licensed premises in a decent, orderly, and respectable manner and prohibit on liquor licensed premises otherwise lawful activities such as rowdiness, undue noise, displays or simulations of certain sexual acts, and displays of pornographic images. Written submissions and testimony at the rule-making hearing regarding greater impairment when both alcohol and marijuana are consumed raised public health and safety concerns properly the subject of a regulation based on the standards of cleanliness, orderliness, and decency. Practices unduly designed to increase the consumption of alcohol is another consideration pursuant to section 12-47-202 (2)(a)(I)(P), C.R.S. Research shows that impairment is increased when both alcohol and marijuana are consumed. Liquor licensees, however, only have the ability to control one of those intoxicating substances and may not be trained to identify over intoxication resulting from cross-consumption or dual consumption. If the state licensing authority is authorized to promulgate a rule designed to prevent over consumption of alcohol, surely she is authorized to promulgate a rule designed to prevent excessive impairment from the alcohol beverages that are consumed. Concerning regulation of the liquor versus the marijuana industry, as the discussion unfolded earlier the executive director of the DOR serves as the state licensing authority for both marijuana and liquor as referenced in sections 12-43.3-201, 12-43.4-201, and 12-47-201, C.R.S. These roles are separate and distinct. The state licensing authority was created for the purpose of regulating and controlling the licensing of the manufacture, distribution, and sale of alcoholic beverages in this state. The regulatory distinction is not the type of product sold or consumed, it is the type of business subject to regulation. An example would include the retail marijuana code that prohibits the use of alcohol by marijuana licensed businesses. Similarly it falls to the liquor code to regulate liquor licensed businesses or where it is silent, to the state licensing authority to promulgate rules under the liquor code. To be clear, this rule is not aimed at regulating marijuana, it is aimed at regulating the conduct of liquor

licensed establishments which are under the authority of the state licensing authority and the liquor code. Regulating and controlling liquor licensing requires more than just regulation of alcohol beverages itself and that is evident in many of the rule making and statutory powers extended to the state licensing authority, for example, regulating employees, officers, and duties, misrepresentation and unfair practices in competition, and signs and displays on the licensed premises of a liquor licensed establishment. In conclusion, Rule 47-900. E. does not regulate marijuana, it regulates in accordance with the Colorado liquor code conduct permitted on the liquor licensed premises. The state licensing authority would welcome additional legislative guidance on the subject of marijuana consumption on liquor licensed premises; however, in the absence of such guidance the state licensing authority has properly exercised her rule-making powers pursuant to existing statutory authority. Rule 47-900. E. is squarely within the state licensing authorities rule making authority under the broad provisions of section 12-47-202 (1)(b) and (2)(a)(I)(R), C.R.S., and the more specific provisions of section 12-47-202 (2)(a)(I)(L), (2)(a)(I)(M), and (2)(a)(I)(P), C.R.S. Any of these provisions, even standing alone, provides sufficient authority for Rule 47-900. E. The rule should stand and not be repealed by the general assembly, we respectfully request.

Senator Kagan said this rule is very sweeping as promulgated. It says that any permitting of consumption of marijuana on a licensed premises, whether the public is invited or whether it is exclusive – under the rule it's deemed public, even if the place is closed, even if the place is restricting entry through a membership system, it doesn't matter, that's not allowed under this rule. It says that it doesn't matter whether you're allowed to consume both or just one. If you're allowing marijuana to be consumed even if you're not allowing alcohol to also be consumed, again that's a violation of the rule. Is it your position that that sweeping total ban, whether the public is allowed, whether alcohol is currently allowed with marijuana, was what the legislature intended when they said regulate health and sanitary conditions, when they said regulate orderliness and decency, that that was within the statutory authority that we were granting such a sweeping rule as has been contemplated here? Or do you think that the legislature is the only venue to make such sweeping, complete prohibitions? Mr. Kammerzell said in the interest of full disclosure I'm not an attorney and that's why I have my attorney here with me and if you'll indulge me, if I might ask for permission to have Ms. Brett-Goldin respond to that on my behalf. Ms. Brett-Goldin said that is the position of the state licensing authority, that the rule is squarely within her authority as drafted and certainly the general assembly in a later statute could narrow that authority, but at this stage where the authority is as written that that is within her authority. I would note, kind of as noted by Representative Gray, that some of the other activities prohibited that have long been prohibited that have at least twice been discussed and

approved by the Colorado supreme court on liquor licensed premises relating to sexual conduct, to simulation of sexual conduct, to pornography, and to other activities that, as Representative Gray pointed out, would be legal in other contexts are fully prohibited on the licensed premises. And similarly, as with this rule, there's no exclusion for a day when a liquor licensed premises might say we're not serving alcohol today, we're just having pornographic pictures in a private room. That it would still be prohibited.

Senator Gardner said I don't want to go down a rabbit trail, but I actually have a concern with this regulation but it's not about the authority of the state licensing authority to deal with this. In the statement or the conduct of the establishment provision as it was revised the state licensing authority deemed liquor licensed premises to be public places and I would just love to have that discussion with you at another time because it seems to me that one, that's not a place we need to go for the authority for this regulation, and two, it raises all sorts of questions in my mind about the licensing authority's authority to deem something public or nonpublic. I suppose, and again I don't want to go too far down this road, but I suppose you could for purposes of liquor consumption and liquor licensing deem something to be public. I'm not sure that makes it public for other purposes in the statutes of the state of Colorado. Just an observation. Ms. Brett-Goldin said I would just state that there is no authority right now as to whether liquor licensed premises are public or not, that the state licensing authority does have the authority to define what's happening on liquored licensed premises, and I would just note that it's intuitive. For example, when Representative Gray was conversing with Ms. Chase about the nudity and sexuality provisions of the liquor rules she noted that those activities were already prohibited in a public place, implying that a bar was also likewise a public place. Senator Gardner said I guess we did go down that road. There are private clubs in the state of Colorado. They are private clubs, they are country clubs, and not anyone can go in there. I assume they have a liquor license and would have to have a liquor license to be serving and so forth, but I'm a little troubled if they are deemed to be public for all purposes or something like that. That's the gravamen of my concern and my question, not about the state licensing authority's ability or authority to regulate, but rather deeming something public for all purposes when in fact for other purposes it might be totally private. It is by the way an issue that gives us a great deal of I think the legal term is fits in the legislature as we try to define these things around these pretty difficult issues. Ms. Brett-Goldin said if that isn't going to the legal authority for the rule I'm not sure if you need me to go further down that path.

Representative Foote said I wanted to draw your attention back to what we heard from Ms. Chase which was that the ability to regulate tobacco consumption within a liquor establishment is specifically written into the statute

and so the rule-making authority is of course not disputed. If that is the case, I'm assuming it's the case, then I guess what I'm wondering is what your take is on the fact that the specific authority of marijuana regulation is not written into the statute and so therefore wouldn't it be the case that the legislature specifically intended for that not to be part of your authority? Ms. Brett-Goldin said the authority within that statute about tobacco specifically authorizes the LED to impose fines and do inspections and take action with respect to underage sale of tobacco to minors. That's very different than this regulation that, as Mr. Kammerzell said, does not regulate marijuana in any way, it simply regulates the liquor licensee and prohibits the licensee from having the marijuana on their premises. Similarly there are provisions about use of food, for example, on liquor licensed premises although food is regulated by other agencies. Representative Foote said I see what you're saying as far as we're talking about two different things practically, but I'm talking more about the legislative intent. Because I think part of your argument here is that the statute is silent and therefore the executive branch has the ability to fill in those parts of the statute that are silent. On the other hand I think the argument would be that if the statute is silent on marijuana, but not silent on tobacco, wouldn't that be a statement of legislative intent that the legislature has not yet intended for the DOR to do anything with regard to marijuana when it comes to liquor licensing. Ms. Brett-Goldin said I respectfully would say that that is not what's indicated. The liquor code is very broad as Mr. Kammerzell went through in detail and it does indicate, for example, that the legislature has not authorized the LED to go out and enforce underage sales of marijuana on liquor licensed premises, that's not a specific duty of the LED, but to then infer that with these extremely broad provisions that a substance, that regardless of the policy decisions of the state of Colorado, the Federal government has retained as a schedule one controlled substance couldn't be banned by the liquor licensing authority seems pretty far beyond what the limitations are of rule-making authority.

Senator Cooke said we are going to put a timer on for the remainder of the witnesses signed up to testify. You will have three minutes so please try to keep it short and concise and under three minutes.

**1:50 p.m.** – David Reitz, Associate Director with the Tavern League of Colorado, testified before the Committee. Mr. Reitz said in my past life I was a LED director and worked for the LED for 25 years so I can probably talk about some of the historically related issues with this. Our association supports this particular regulation. We also feel it's consistent with the statutory authority of the LED, specifically I think as Mr. Kammerzell's testimony was about authority under section 12-47-202 (2)(a)(I)(R), C.R.S., it gives very broad legislative authority to the LED which is also consistent with the legislative

declaration which asks the LED to enforce the law for public safety and welfare purposes. I would also point out that we feel this regulation is also consistent with section 16 of article XVIII of the state constitution which prohibits marijuana consumption in open or public places, but it also prohibits its consumption in a manner which endangers others and we do feel that the consumption of marijuana and alcohol in combination, both being depressants, is an extremely dangerous activity and really falls within the authority of the LED in its rule-making authority to ensure that that does not occur on liquor licensed premises. The combination of the two is very dangerous. I know our members are very concerned about that and that's the reason they supported this particular regulation. In an effort not to be redundant I'm just going to say that I think the studies show that. I think the rest of the information that was provided by Mr. Kammerzell was pretty concise.

**1:52 p.m.** – Heather Frayer, President of the Colorado Bar Owners Association and an independent bar owner, testified before the Committee. Ms. Frayer said I would like to say briefly that the Bar Owners Association absolutely recognizes the authority for the LED to regulate matters regarding safety in a liquor licensed premises. In my personal experience as an independent bar owner it is absolutely a health concern to have dual consumption in a licensed premises. I would also state that as eloquently put by Mr. Reitz and also Ms. Brett-Goldin, it's crucial that they regulate all things regarding health, matters regarding food, how long I have to serve food, what I'm allowed to do in and out of my premises, and not only is it food related, it's also that I can't have strongman competitions because strongman competitions can incite other issues regarding health and safety. So I don't believe on any level that they are reaching outside of their legislative authority.

**1:54 p.m.** – Nick Hoover, with the Colorado Restaurant Association, testified before the Committee. Mr. Hoover said in the spirit of keeping this concise and brief I'm not going to rehash what has already been discussed by previous testifiers and by the DOR, but I would say that the Colorado Restaurant Association views this as not a rule on the regulation of marijuana, but a rule as to what can happen within a liquor licensed establishment which directly falls under the LED's authority. With that being said, they cited specific statutes that allowed them to make rules having to do with nudity, having to do with pornography, and having to do with sexual acts or visuals of sexual acts and we feel that those very same statutes give them the authority to promulgate this similar rule having to do with the conduct inside a liquor licensed establishment. Additionally, as stated by the health department in much of their public information, using alcohol and marijuana at the same time is more dangerous than using either alone and increases the risk of car crash. It is our belief that that right there directly goes to the health and safety of an

establishment and therefore the LED has the authority to make these regulations. With that I'll end my testimony and agree with the previous testifiers.

**1:55 p.m.** – Emmett Reistroffer, director of Denver's Initiative 300 campaign and member of the Denver's Initiative 300 implementation committee, and Josh Kappel, Partner at Vicente Sederberg and drafter of Initiative 300, testified before the Committee. Mr. Reistroffer said I was in attendance at the LED's hearing when they passed this rule and I just wanted to make a couple comments. I don't want to repeat what was already said, but I am in agreement with the Office's assessment that this was not consistent with the LED's statutory authority. We think it was a broad overreach and quite frankly I think it really defies the spirit of the voters in Colorado and in Denver particularly. I personally believe this rule was a direct response to our initiative campaign. The timing was quite ironic you could say. I think it was a direct response and I think it directly conflicts with what the voters in Denver approved and the reason why we pursued a ballot initiative to create designated areas is because we recognize this is already happening in Denver on a widespread basis. We're not seeing these liquor authorities respond to public safety issues as a result of it already happening right now. Almost every concert and entertainment venue I go to and will go to tonight, I'm experiencing cannabis consumption all around me in these environments so we have attempted to pass something that would regulate that and have some control over this. Mr. Kappel said really we drafted the initiative to address this problem that there's no legal place for adults to use cannabis and this has been an issue that's been heavily discussed in Denver, it's been discussed in Pueblo, it's been discussed in this house multiple times, it's been discussed with the Governor's task force, and it's a very serious issue and this rule is very, very broad and actually takes away one of the very few places left for tourists to go to use cannabis which is hotels. The whole hotel is a liquor licensed premise and that is an issue that has not been brought up in this process. This is a sweeping change, this rule, and is more properly to be considered by the legislature like you have been doing already. Mr. Reistroffer said if I could also add that at the LED hearing when they passed the rule I know we're talking today about the process and the statutory authority and not the policy, however, I find some conflict in the way in which they passed the rule because almost all of the testimony I heard that day was about how it was good policy to ban it and not really on their authority.

Senator Kagan said Mr. Kappel, you say the proper venue for discussing this policy is in statute rather than in rule, but is there any legitimacy to discussing this in rule in your view? In other words does the LED have the authority of passing the rule and if not I'd like to know why you think not? Mr. Kappel said I do not believe they have the authority under statute for this rule. When we looked at this the other way and we said can the MED ban alcohol on

marijuana licensed premises and there's a specific statute that authorizes that and there's no specific statute here, just looking at it purely on that one piece. I think there are other arguments as well, but I think without the express statutory authorization they cannot create a sweeping rule that fundamentally changes how marijuana is consumed in Colorado.

Representative Foote said a two part question for either one of you and I'm wondering if you could respond to the argument put forth by the DOR that the statute does allow broad authority and the terms are quite broad, for example, it regulates the establishment where liquor is served and not necessarily the fact that it's liquor or another substance and that it could also fall under the health provision which would by case law include considerations of public health. Mr. Kappel said they do have broad authority, the LED, but the question that you guys are tasked with, which is a difficult one, is how broad is that authority and what sort of legal, lawful activities under state law can they regulate in without express statutory authority. In my opinion, I think considering that this has already been discussed here at the legislature, that people are working on this here, I think it appears as separation of powers and I think it's best for a sweeping change like this to be decided in this body. However, that is ultimately your question here.

**2:02 p.m.** – Kayvan Khalatbari, with Sexy Pizza, Sexpot Comedy, and lead Proponent on Initiative 300, testified before the Committee. Mr. Khalatbari said we've talked a lot about lack of authority and I don't know if that's anything in my position that I can really speak to. What I can speak to is the intent of the voters in Denver. The fact that the way we wrote Initiative 300, the way we presented it, was to allow it in all business types and one of those business types was bars, were places that have liquor licenses. This was debated in public and was expressed over and over in the Denver Post, on media, this is something that the voters of Denver were very aware of happening and they chose to vote in favor of that. I think it was 54% we had in favor. This goes against the wishes of the voters of Denver. I think it's preemptive. And I think it's trying to solve a problem that has not materialized or come to fruition. I think that we put certain things in Initiative 300 that safeguarded us regarding this topic. It is a pilot program. If it is a failure it expires in four years. It is a permit so that these registered neighborhood organizations that are required to support these permits out of the gate can say no liquor consumption; they can dictate that as a condition of these permits. We did all these things knowing that this was going to be an issue that people discussed, but we wanted to see it be materialized in reality and for us to respond to that when we had that opportunity. Preemptively solving a problem that has yet to transpire I think is irresponsible, especially with this being discussed at the state level with so many other bills and this has obviously been discussed the last couple years quite a bit and I agree with

Senator Kagan that with my pizzerias I don't intend on having cannabis consumption areas during the day in the family establishments. I would like the opportunity as a business owner to have a private party, to have something late night. My comedy production company has 40,000 people go through the turnstiles to see our shows every year and I'd like to give them the opportunity to consume cannabis in some of these venues that all have liquor licenses and they can't even do that by suspending their liquor license for one night and allowing cannabis consumption under this. One quick thing on insurance because I think that's been dramatized quite a bit. It took me about 30 minutes to find an insurance company that would underwrite and insure one of these public consumption spaces. I could probably get a dozen more before the end of the day. Finally, I think we've really ignored the fact that there are 106,000 patients in Colorado and 1.5 million patients that use medical cannabis in the United States that come here and visit that do not have a place to consume. And back to the opioid discussion, it should be applied across the board to all medications that are intoxicating and in poly consumption with alcohol create an issue. To just do it for alcohol is again irresponsible and I think short sighted.

**2:05 p.m.** – Christian Sederberg, Principal at Vicente Sederberg and member of Amendment 64 Task Force, testified before the Committee. Mr. Sederberg said this is an issue I'm very familiar with as one of the drafters of Initiative 300 and Amendment 64. As this issue came up during the task force, it has been kicked down the road a number of times. It looks like this legislative session we're going to see real discussion on the policies behind allowing liquor and alcohol to exist. Through Senator Marble's bill there's a detailed part of the bill that includes not having food and not having alcohol. These policy discussions need to happen. I think that the most troubling part about the rule being sort of a kneejerk response perhaps to Initiative 300 is the fact that it's bad public policy. Senator Kagan pointed out very well the fact that if it's a liquor licensed premises and you can't offer alternatives or at least have discussions about alternatives of not having liquor one night you know you're going to find a continuation of what currently exists, which a number of bars and restaurants I've spoken to deal with all the time, which is that people go outside, go around the corner, go down the alley, go out on the patio, and consume marijuana. And they try to police these things, but it's hard to do. My concern is that if we totally separate these places and we don't actually have a discussion about this, I will be consuming alcohol in place A, I'll cross the street to place B where I can consume, presumably, marijuana without alcohol, the proprietors of place A and place B do not speak to each other, and when you talk about public health that is a real issue. Now am I right about that, I don't know, but what I know is that historically marijuana has been regulated by bringing a group of people together that are stakeholders and create a consensus around these issues. We bring people, MADD, and others to the table to talk about these things and so



when no one on the marijuana side particularly, my colleagues and others that I've worked with that have been invited to these work groups for years and have been a part of these task forces for years, were invited and the liquor industry dictated and really pushed this through and I find that really I would describe that as disappointment that this rule would go through without a broader discussion with the marijuana community. But again I'm not saying that we're right, that they should have the opportunity to be together, I'm simply saying that that policy decision should be deferred to the legislature.

Representative Gray said just from a procedural perspective were you aware of when the hearings actually were held in the making of this rule, when they were going on, and did you have the chance to participate in them? Mr. Sederberg said yes, I was aware, and I'm not saying there was not a public process. I'm simply saying that the traditional stakeholder system that has been used and used successfully. That's not my assessment, that's the assessment of the Brookings Institute, that's the assessment of Cato, that's the assessment of every major newspaper in this country that looks at Colorado as a leader on marijuana; I'm talking about that broader stakeholder group, not about whether there was public access to the hearing process. So yes I was aware and we did attend and we had representation through that.

Representative Foote said I guess I'll ask you the same question I did for a couple of prior witnesses, which is that it appears that the statute that we have at this point grants pretty broad discretion and authority to the DOR through terms like establishment where it regulated an establishment for example or health, which could mean public health, because case law has told us that. Tell me your opinion as to why this particular change does not fit within that broad authority. Policy is not part of it, just tell me why it actually doesn't fit under the authority in your opinion? Mr. Sederberg said I defer and I've read the Office's document and I agree with that. I understand there is broad authority and certainly no one's questioning the breadth of that authority, but on this particular rule I agree with the assessment of the Office.

Senator Marble said what are the penalties that were initiated for infractions after this law was put into place by the DOR? Mr. Sederberg said maybe just perhaps a little bit of clarification, what is the penalty for violating this liquor rule? Senator Marble said yes. Mr. Sederberg said well that's an important part when you talk about breadth and impact and perhaps unintended impact. Now your liquor license, which is a dual licensing authority for state and local, and until the passage of Initiative 300 the city law included a provision that did not allow the use of a federally illegal substance such as marijuana on the site, so the city could have taken action against the liquor license. That authority was not in state regulation so now presumably if there's a violation there would be

an investigation perhaps in order to show cause and you would go to a hearing and you'd have to defend whether or not your liquor license should remain in place, should you pay a fine, or could it be taken. All those would be on the table. Senator Marble said so these are pretty stiff penalties for infractions that they implemented themselves. Mr. Sederberg said incredibly stiff and the potential for losing the very piece of paper that allows you to maintain your livelihood, your liquor license, that's the perhaps intended, perhaps unintended, effect of such a broad rule. One, if it's my livelihood on the line all the sudden this new rule using this broad authority, and really that's why the policy considerations are so important to me, it fundamentally changes at least how I would perceive as an independent bar or restaurant owner that risk. Senator Marble said so the DOR had a hearing, wrote a law, and is initiating very, very stiff penalties for infractions on this law, possibly up to losing a liquor license. Why do we need the legislature if they're doing all of this? Mr. Sederberg said to be fair, and I'll defer to my friends at the enforcement division, I don't know that anything has happened yet. Again this is why one of the previous speakers spoke about a solution in search of a problem or sort of alluded to that. Only recently did Denver pass Initiative 300 and we're still in the process of having those policy discussions to determine what this should look like, whether there should be both liquor and alcohol even on the same premises. Perhaps we'll decide that that's not the direction to go. So to be fair we haven't seen that enforcement, but the problem is the looming threat and the potential for enforcement. When that is my license I have to take it incredibly seriously and it fundamentally changes everything. I think the hotel example is really interesting too. Hotels have liquor licenses that cover their rooms when they have liquor service to rooms so this rule now takes away a private space where people are consuming marijuana potentially from being able to even do that because the hotel says I don't want to lose my liquor license and if I don't want to lose my liquor license I've got to make sure I'm enforcing very strictly the consumption of marijuana inside of my rooms which are covered by my liquor license. I don't think there is any intention of these things, but this is why when you do such substantial policy changes which might seem small, these are the types of things we would have pointed out and said hey, let's work together on this and figure these things out. And I'm still considering that to be the case with the legislative session. But without those discussions, these unintended consequences, perhaps intended consequences in some cases, fundamentally change how we are approaching marijuana again and I think that's incredibly important to recognize. Senator Marble said I do believe that this is a very serious statute and I think that the breadth that it has gone to to implement such a serious law, I think it does belong in the legislature because the penalties are such that we have to be aware of what they are, that this was actually happening. In a lot of ways it's like why weren't we as legislators at the hearing, why weren't we invited, or why weren't we alerted? It seems as though many of the people there

at the hearing were in favor of it and I see that, but we have hearings here in the legislature and we invite everyone and it is public, people can find out about it, there's great discussion, and I think that is where this belongs, not with the DOR and so that was why my comment came up, why do we need the legislature. And I think we do need the legislature and our role is very important and I think that this is one of those areas where this is our job.

Representative Wist said I appreciate your testimony, it's been helpful. Your comments about process and opportunities to comment are well taken and I hear you. I'd like to sort of steer us back to what we're really here to decide or hear testimony about, which is what statutory authority there is for this. I guess at the end of the day I'm left with a statute that says that a regulatory agency can do A and it can do B, so why can't it do A+B? Mr. Sederberg said if I could restate the question just to make sure I understand it and maybe so other people can too. You're saying that the executive director of the DOR is the state licensing authority for both alcohol and marijuana, so if she's signing off on new regulations in both alcohol and marijuana, then why are we sort of having this discussion here because we're arguing about whether the authority lies is A or B? It's an interesting sort of philosophical question about government. The answer in my opinion, but I would defer again to the agencies, is there's a reason why the different divisions have different sets of rules in terms of how far they can go in creating new regulations and just because at the top the state licensing authority oversees both of them, that does not mean that as long as it fits in one of these buckets it would be appropriate. If you talk about horse racing or things that are regulated by the automobile division, could I pass a law using the automobile dealer's enforcement power to deal with alcohol there. If that was the case you would give just full regulatory authority on all of these things under one regulatory agency perhaps, but those laws have been around for a long time, I didn't pass them, I work inside of primarily the medical marijuana/marijuana regulatory world, and there's such different policy considerations that I think the executive director simply has to wear multiple hats when doing her job. And certainly when it comes to alcohol and the authority given there and the certain things that are specific to alcohol, you have to wear a fundamentally different hat when making those regulations then you do when making the medical marijuana/marijuana regulations. Honestly they've done a great job on medical marijuana, they've been very thoughtful, very thorough in that processes. Mr. Kammerzell and the executive director chaired the task force, so I would say that they just wear multiple hats and if we have these laws and these different things there must be a reason.

**2:19 p.m.** – Nick Phillips, private citizen, testified before the Committee. Mr. Phillips said I just came to speak on behalf of a voter and as previous testimony stated the whole Initiative 300 kind of gave this impression of venues where you

could have the opportunity to, if you wanted to, not participate in drinking alcohol and you could instead choose to use cannabis and that was a big reason for why a voter like myself voted yes because I'd prefer not to over consume alcohol, I'm not a very good drinker, so I've gone out with friends and would prefer the opportunity to consume cannabis in a legal, comfortable atmosphere and then be able to interact with them as they consume their beverage of choice. By just coming through and saying no liquor establishment can have this opportunity to have these designated social consumption areas which to me kind of means it's more of a private, secluded area then just the public bar scene where you have to smoke tobacco outside, I mean those tobacco areas you can bring your drink, but maybe this marijuana consumption area is also outside and you can't bring your drink in there because you can't dual consume so you've got your bracelet on that says I'm not consuming liquor, I'm consuming cannabis. You could still go to Red Rocks and have an area where you don't have to secretly consume your cannabis, which is legal here, you can instead go privately do it and come back and enjoy the show where everybody else is drinking and doing their thing. That was kind of my opinion to present to you all.

Senator Kagan said I just wanted to thank you as a citizen for taking the time to come.

**2:21 p.m.** – Fran Lanzer, State Executive Director for Mothers Against Drunk Driving Colorado, testified before the Committee. Mr. Lanzer said I think a lot of my testimony was already read into the record by an earlier witness so I think I just wanted to state for the record that we do not oppose the legalization of marijuana, we did not oppose it. We've chosen to treat marijuana the same way we do with alcohol and we're not out trying to close bars. If we were talking about cannabis clubs we might not be here. But the issue of co-consumption of marijuana and alcohol is an emerging public safety issue. There is emerging research on the topic that is concerning and so from our perspective we felt that we wanted to support the rule until the research indicated that something like this could be done safely.

**2:23 p.m.** – Jessica LeRoux, private citizen, testified before the Committee. Ms. LeRoux said I am here today to represent people in the rural parts of the state. You know here in Denver where they passed Initiative 300 there are a lot of physical locations that could benefit from allowing cannabis use events. But when you get out to the rural part of the state where I live in Park county we don't have in our entire county which covers a huge amount of square footage ten liquor licenses and restaurants combined. We don't have any venues that have social activities of any sort. There's really nowhere to go and at nine pm everything in the county is closed down. Now I can tell you on August 23 of

this past summer 2016 I personally passed my 20 year anniversary of not using alcohol. That entire time I did smoke cannabis. I'm not ashamed of my cannabis use, now it's legal, I fought for it to be legal because I was sick and tired of being stigmatized when I went out with all of my friends who drink alcohol here like fish in this town where drinking is a big activity and I was the odd person out. I was always counted on for a ride both to and from the bar. I was always counted on to be the sober and reliable person. I cannot tell you how many times I have been to a party at a private event, maybe a music festival in a field out somewhere in the woods, where I was the only sober person available to drive somebody's kid to the hospital when the drunk parents weren't able to take charge of the situation. I think this stigmatizing of keeping people who drink and people who use cannabis apart is a big problem because when you have people who use cannabis only, you have someone there who's a little bit more sober than the people who use alcohol. I don't know if you guys have actually contemplated this, but alcohol is a very intoxicating substance. I use my cannabis medically. I am pretty tolerant to the use of it. I might obtain intoxication if I really go after it, but there's no opportunity in my life where that's a goal for me and there's no amount of liquor sales that are going to drive me to start drinking now after 20 years without alcohol. I find alcohol to be a drag. I'm sick of being around people who use it, but that doesn't mean I want to be excluded from using my cannabis in a club where other people are using alcohol because your choices are either don't use alcohol and don't participate in any social activities or use cannabis and try to participate in social activities where you're not using alcohol, but you can't be an equal member of that. It costs me the same amount of money to buy a ticket to go to a concert at the Ogden, it costs me the same amount of money as a drinker to go to Red Rocks, but I don't get the same benefit of access because we've said that liquor is okay. In reality liquor is much more dangerous. If you look at me compared to people my age that are in this room that drink liquor, you'll see I'm a lot younger looking than they are because I'm not abusing and poisoning my body with liquor. I'm an intelligent adult person and a voter and I'm quite capable of making the decision when I go into a club to use my substance of preference without becoming intoxicated just like some drinkers can use their substance of preference without becoming intoxicated and you need to give respect to the voters in this state, in every part of this state to have access to social use because it's not just a Denver issue and this kneejerk reaction is punitive to people who live in other areas where there are less social locations to get into.

Senator Kagan said just a reminder to members of the Committee before voting that this question is who should decide if there should be a blanket ban on marijuana consumption occurring on licensed premises. It's not whether there should be a blanket ban, it's who should decide. Should it be the LED or should it be the people of Colorado speaking through their representatives.

**2:27 p.m.**

Hearing no further discussion or testimony, Senator Kagan moved that the rule of the Liquor Enforcement Division, Department of Revenue, concerning the Liquor Code, as adopted by the Liquor Enforcement Division on November 18, 2016, be repealed effective May 15, 2017: Rule 47-900. E., concerning marijuana consumption.

Senator Gardner said before we vote, and I don't want to belabor the point, with all respect I disagree with my colleague Senator Kagan. I don't think the question before us is who should decide, the question is whether or not the legislature has granted the authority to the LED to pass this particular rule. This session of the general assembly will meet for another 90 some odd days and may well decide some issues concerning this so I think the question before us is the one that statutorily is before us.

Representative Willett said I have a procedural question perhaps for Ms. Haskins. Let's say the vote is no and no carries the day so this rule continues and this is out of cycle, could it come back up again on its regularly scheduled 2018 date? Ms. Haskins said yes, in theory, it could come up next year.

Senator Gardner said Ms. Haskins, assuming the vote were no, would it be in order, and maybe that's up to the chair, to move that the rule be extended out of cycle? Ms. Haskins said the issue of the expiration is not before this Committee at this time. The expiration under the statute in the APA for this rule would be May 15, 2018, so I think to do a motion to extend following at this time would not be appropriate. Senator Gardner said I know that we have extended rules early on occasion. Ms. Haskins said we can research the question after the meeting. I think at this point the issue right now is a motion to repeal the rule and that's the question before the Committee at this time. Senator Gardner said thank you.

Representative Gray said I do just want to reiterate, especially for folks who gave testimony to us about how this rule would have a negative impact on them or how this rule is bad public policy, our consideration as we're charged here is a very sort of limited review which is not to say that the rule was made well, that the rule couldn't be improved, that we might not pass another one, that it was a bad idea or a good idea. And I think it's a hard thing to hear for normal people who come into a room like this to see a bunch of people who clearly have power to do something about this rule then try to say things like that to you, but I also sort of do want to reemphasize this because I personally probably reached a couple different outcomes here as to whether this rule as it was written without any of the nuances we've discussed was the best way to go

about it versus whether in a broad amount of authority they had the right to do that. Our job isn't to second guess people, it's to decide whether they violated the law in the kind of rule they made. I just wanted to reemphasize that for people before we cast our vote yes or no on this. We're not saying this is a good idea or not; we're saying do we think this was an illegal action or not.

Representative Foote said this actually has been a very good discussion. Thank you to those who have testified, thank you colleagues for doing this. I certainly came into this hearing undecided and with a number of questions. I'm going to vote yes on this motion by Senator Kagan and here's why. It is the case that there is wide authority given to the DOR, but I also take a look at what we've done over the last four years here at the legislature since Amendment 64 passed in particular and I kind of, this won't be exactly a legal term, but I kind of divided up all these codes to pre marijuana and post marijuana, Amendment 64. Since 2013 we have passed an extensive number of bills dealing with marijuana, and particularly Amendment 64, but not limited to Amendment 64, also to Amendment 20. And that has been subsequent to the language that's in the liquor code that we're discussing today. So that could lead one to two different conclusions of course because we're in the legal services committee so we always have two or more different conclusions. One is that the legislature has intended to keep the liquor code the same because we haven't said anything about it or two, which I lean towards for the purposes of this discussion, over the last four years the legislature has intended to occupy the field when it comes to marijuana and if we're silent on something it means that we've decided that we don't want that effect to occur. In other words, specifically for this, I think the legislative intent is that marijuana is not to be part of the liquor code because we have been silent on it since 2013. As I've said there can always be different interpretations. We're called upon to come to a conclusion for our vote and I think the thing that really turns me on this is that in the Office's memo it does talk about the fact that the legislature was specific in allowing tobacco to be regulated as part of the liquor enforcement and if the legislature had intended since 2013 to do the same for marijuana we would have said so. And in fact perhaps during this session or others we will say so, but right now I think because it's silent I think to me that leans towards us, the legislature, saying that we don't intend for marijuana to be regulated in this particular way at this time. That's why I'm going to be voting yes on this.

Senator Kagan said I want to state for the record that I stand corrected by Senator Gardner. I said should this be regulated by the LED or should it be regulated by the general assembly. What I should have said was may this be regulated by the LED or may it only be regulated by the general assembly and Senator Gardner's point is well taken.

The motion failed on a vote of 4-5 with Representative Herod, Senator Kagan, Senator Marble, and Representative Foote voting yes and Senator Gardner, Representative Gray, Representative Willett, Representative Wist, and Senator Cooke voting no.

**2:36 p.m.** – The Committee addressed agenda item 2 – Approval of SB 17-083 by Senator Kagan; also Representative Foote - Rule Review Bill.

Senator Kagan said it's my privilege to bring before the Committee the Rule Review Bill, SB17-083. I would just remind the Committee that all of the rules that we seek to not extend, that we allow to expire, that are listed in the bill, we have previously voted on and are therefore according to previous actions that have been agreed to by this Committee they are rules that should not be extended. I urge you to support SB17-083 on that basis and I urge an aye vote on this bill.

**2:38 p.m.**

Hearing no further discussion or testimony, Senator Kagan moved to refer Senate Bill 17-083 to the Committee of the Whole with a favorable recommendation. The motion passed on a vote of 8-0 with Senator Gardner, Representative Gray, Representative Herod, Senator Kagan, Senator Marble, Representative Wist, Representative Foote, and Senator Cooke voting yes.

**2:39 p.m.** – Christy Chase and Thomas Morris, Managing Senior Attorney, Office of Legislative Legal Services, addressed agenda items 3 – Update on Title 12 Recodification Project.

Mr. Morris said I believe you have a background document, a summary that explains the whole process. Most of the people on the Committee have been around and are somewhat familiar with this, but for those who are not, last year the legislature passed SB16-163 that directed the Office to conduct a study to investigate the possibility of recodifying title 12 which regulates professions and occupations. We started that study last interim, held a lot of public meetings that are itemized in the background document, and had a lot of stakeholder input. The original idea was to merely do that much this past interim, but based on the stakeholder input the Office decided to bring a couple of bill ideas to this Committee back in the fall. The first of which was to change the APA to reduce the fiscal impact when the legislature relocates a statute and a rule cites that statute and therefore the rule would need to be amended. The bill, which is HB17-1006, would change the APA to say that an agency doesn't need to go through a full blown rule-making hearing in order to update a statute when the legislature relocates that statute. That bill has passed the House and it is in the



Senate at this point and one of the ideas was to have that happen at a relatively rapid pace so that the bills that we brought to the Committee and the Committee approved in concept would have their fiscal analysis take that into account because it would already be law at the time the fiscal analysis took place. With regard to those other bills there was a list of items in the memo, it's on page 5, of things that we referred to as the low-hanging fruit. Pursuant to the stakeholder process there was a consensus that a completely nonsubstantive relocation of these articles out of title 12 that are administered by departments other than the department of regulatory agencies (DORA) could be accomplished. The stakeholders had no problem with that as essentially the idea was that title 12 after the end of this recodification process would consist only of professions and occupations that are regulated by DORA. Currently title 12 has a bunch of professions and occupations in articles that are implemented by other departments than DORA, so all of those articles that are listed on page 5, the stakeholders agreed it would be feasible to move them out of title 12 ahead of time rather than wait for 2018. The big picture of the study is that it was originally to use the 2016 interim to test the waters and then during the 2017 interim to do kind of the heavy work of figuring out draft bills to actually recodify the entire title, subject to this Committee's approval. But as I mentioned we did have these two categories of bills that are contemplated for introduction in this session, HB17-1006 regarding the APA and then those other lists of bills about articles that are implemented by departments other than DORA. I guess I would turn it over to Ms. Chase at this point to see if she has anything to add on any of those points.

**2:45 p.m.** – Christy Chase and Thomas Morris addressed agenda item 4 – Consideration of Bill Drafts and Sponsors for Title 12 Recodification Bills that Relocate Certain Articles from Title 12 to other Titles in the Colorado Revised Statutes.

Ms. Chase said Mr. Morris covered the status of the study so far and why we're here before you today and it's mainly item 4 on your agenda which is bills that the Committee authorized us to draft last fall, but did not want to make a decision on whether or not to introduce those bills until the newly constituted Committee was in place. We have a list of 14 bills for your consideration and to determine whether or not you'd like to proceed with introducing the bills. These are simply relocating without making any substantive changes to the statutory provisions numerous articles out of title 12 and into titles that appear to be more appropriate based on the subject matter of the articles. We did get a lot of feedback, but I will note that on some of them we didn't hear any feedback, for example, Indian arts and crafts sales. In some cases we reached out and didn't hear anything from anyone. We thought this might prompt if anyone had a problem to hear something about it, but still we haven't heard anything. Of

course everybody might be tired after our lengthy hearing today. At this point these are the bills that based on our study so far we feel these articles could be moved out of title 12 if you were to pursue these bills.

**2:46 p.m.**

Hearing no further discussion or testimony, Representative Foote moved for the introduction of bill drafts LLS 17-0226, 17-0227, 17-0228, 17-0229, 17-0230, 17-0234, 17-0235, 17-0236, 17-0237, 17-0238, 17-0239, 17-0240, 17-0241, and 17-0242. The motion passed on a vote of 8-0 with Senator Gardner, Representative Gray, Representative Herod, Senator Kagan, Senator Marble, Representative Wist, Representative Foote, and Senator Cooke voting yes.

The Committee assigned sponsors to the bills.

**3:00 p.m.** – Dan Cartin, Director, and Sharon Eubanks, Deputy Director, Office of Legislative Legal Services, addressed agenda item 5 – Approval of the OLLS Budget for FY 2017-18.

Mr. Cartin said we appreciate the opportunity to present to you the Office's budget request for the 2017-18 fiscal year. Thank you for all the support you give our Office. We are grateful for the opportunity to serve you and the institution. Ms. Eubanks is going to present our budget to you. I'd like to thank and acknowledge Matt Dawkins who crunches the numbers every year and puts together the budget documents for you together with Ms. Eubanks. This is the first step with the Office's budget. With your approval our budget usually undergoes some adjustments during the session when it goes to the executive committee along with the other legislative staff agency budgets for approval and as part of the legislative budget bill ultimately considered by the entire general assembly. We will keep you apprised of the adjustments, if any.

Ms. Eubanks said I know that for many of you this is your first opportunity to see one of our budgets. You should have the budget packet in front of you. You also hopefully received it earlier by email so you could review it. Our fiscal year 2017-18 budget request is basically a total request amount without what's referred to as PRA amortization equalization disbursement (AED) and the supplemental amortization equalization disbursement (SAED) is \$6,507,493. That's a 3.49% increase from the amount that was appropriated for the current fiscal year. When you add in the PRA AED and SAED amount, which those amounts total \$477,648, the total request with AED and SAED is \$6,985,139, which is a 3.88% increase from our current fiscal year appropriation. Our budget request covers four major categories of expenditures by the Office: personal services, operating expenses, the Office's travel expenses, and the

Commission on Uniform State Laws (CUSL). And I'm actually going to address them in reverse order. First, for CUSL the total amount requested is \$95,720. That's an increase of 3.65%. There's increased funding to cover an increase in the membership dues to NCUSL which is a \$2,800 increase and we're also requesting an additional \$570 for anticipated increased travel costs for up to 10 commissioners to attend the national NCUSL meeting in San Diego. The second component is the Office's travel. The total amount requested is \$24,472. There's no change in the amount requested for instate or out-of-state travel from our current budget. For our operating expenses the total amount requested is \$453,810, which is a 1.4% increase. This includes funding for contract printing, publications, and our legal fees for litigation. Specifically in terms of increases, the office supplies request is being increased by 6.55% due to the impact of the Statutory Revision Committee responsibilities. Our Office staffs that committee. We also are asking for a 1.92% increase for membership dues because we are anticipating an increase in the membership fee for the Mountain State Employers Council and we're also asking for the contract printing amount to be increased by 2.35% in recognition of the ability of LexisNexis to ask for an additional 3% compensation under the current publications contract. The lion's share of our budget is personal services and that amount requested for 2017-18 is \$5,933,491. That's a 3.67% increase. This amount funds current salaries plus at this point it includes a 2.5% salary survey amount which equals \$107,008. At the present time this salary survey is based on the governor's November 1<sup>st</sup> budget request where he requested for executive branch agencies the 2.5% salary survey. The Joint Budget Committee (JBC) has not yet acted on their common policies regarding the salary survey so we've included it for this point and time with the understanding that at some point in the future based on direction from the JBC or the executive committee that that may need to be changed. The amount requested for personal services at this point and time also does not include anything for merit or attorney pay parity. It does include 9.74% increase in associated costs resulting from the salary survey increase, due to staff retirement we now only have one employee remaining who is exempt from the Medicare tax, and it also reflects changes in the employer contribution rate for health, life, and dental insurance per the JBC's common policies. The other budget lines in our personal services part of the budget remain at their current funding levels. Again in summary the total amount requested without AED or SAED is \$6,507,493, with the AED and SAED the total amount is \$6,985,139.

Senator Gardner said where's the Mountain States Employer Council line item? Ms. Eubanks said it is in the operating expenses, so it would be on the third page of the spreadsheet in the laundry list under general operating expenses under membership dues. Senator Gardner said what services do we get? I know they do the annual highly encouraged training for members and mandatory for

others, are we using them for any other employment services? I'm just curious; I don't really question the expense. Ms. Eubanks said yes we do use them for other services, a lot of times in terms of personnel issues we consult with them about how to handle a particular circumstance because they're much more well versed and experienced in those areas.

**3:07 p.m.**

Hearing no further discussion or testimony, Senator Gardner moved to approve the budget for FY 2017-18 for the Office of Legislative Legal Services and to allow the OLLS staff to modify the budget as needed by the Joint Budget Committee and the Executive Committee. The motion passed on a vote of 7-0 with Senator Gardner, Representative Gray, Representative Herod, Senator Kagan, Representative Wist, Representative Foote, and Senator Cooke voting yes.

**3:09 p.m.**

The Committee adjourned.